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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,313	01/12/2006	Akito Fukui	L9289.05200	8038
52989 7590 03/18/2009 Dickinson Wright PLLC James E. Ledbetter, Esq. International Square 1875 Eye Street, N.W., Suite 1200 Washington, DC 20006				
EXAMINER				
PHAN, HUY Q				
ART UNIT		PAPER NUMBER		
2617				
MAIL DATE		DELIVERY MODE		
03/18/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/564,313

**Applicant(s)**

FUKUI ET AL.

**Examiner**

HUY Q. PHAN

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-12 is/are allowed.
- 6) ☒ Claim(s) 13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 01/12/2006 has been placed in record and considered by the examiner.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 13 and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to independent claims 13 and 14, the applicant recites directly to "A program" (see claims 13 and 14). The programs are considered an abstract idea, because the programs are not physical "things" and/or are not "acts" being preformed; thus, "A program" is not fallen within one of four statutory categories of invention, it is non-statutory subject matter.

### **Reasons for Allowance**

3. Claims 8-12 are allowed.

The following is a statement of reason for the indication of allowance:

The independent claims direct to a transmission method comprising: multiplexing retransmission packet data requested for retransmission and new transmission packet

data not requested for retransmission when retransmission is requested from a communicating party;

storing temporarily the retransmission packet data and the new transmission packet data multiplexed in a buffer;

storing receivable data amount information that associates reception quality information of the communicating party contained in a received signal with a receivable data amount in the communicating party and that is shared with the communicating party, detecting the receivable data amount by referring to the receivable data amount information using the reception quality information, adjusting and an amount of multiplexing data between the retransmission packet data and the new transmission packet data so that the amount the retransmission packet data and the new transmission packet data in the buffer is less than or equal to the receivable data amount detected; and

transmitting the new transmission packet data and the retransmission packet data stored in the buffer to the communicating party.

The closest prior arts have been found.

Kurobe (US 6,233,251) discloses a transmission method comprising: multiplexing retransmission packet data requested for retransmission not requested for retransmission when retransmission is requested from a communicating party (col. 4, lines 20-54 and the specification for more details); storing temporarily the retransmission packet data multiplexed in a buffer ("storing" see col. 4, lines 20-54); storing receivable data amount information that associates reception quality information

of the communicating party contained in a received signal with a receivable data amount in the communicating party and that is shared with the communicating party ("video data, or the variable-length data employing retransmission" see col. 4, lines 20-54). However, Kurobe fails to show the claimed limitation detecting the receivable data amount by referring to the receivable data amount information using the reception quality information, adjusting and an amount of multiplexing data between the retransmission packet data and the new transmission packet data so that the amount the retransmission packet data and the new transmission packet data in the buffer is less than or equal to the receivable data amount detected; and transmitting the new transmission packet data and the retransmission packet data stored in the buffer to the communicating party.

Lee (US 2005/0058154) discloses adjusting and an amount of multiplexing data between the retransmission packet data and the new transmission packet data (see [0101]); and transmitting the new transmission packet data and the retransmission packet data stored in the buffer to the communicating party (see [0101]). However Lee does not particularly discloses that detecting the receivable data amount by referring to the receivable data amount information using the reception quality information, adjusting and an amount of multiplexing data between the retransmission packet data and the new transmission packet data so that the amount the retransmission packet data and the new transmission packet data in the buffer is less than or equal to the receivable data amount detected.

Bellaton (US 6,473,425) discloses detecting the receivable data amount by referring to the receivable data amount information using the reception quality information, comparing and an amount of multiplexing data between the retransmission packet data and the new transmission packet data (see col. 7, lines 1-8). But, Bellaton does not teach claimed limitation adjusting and an amount of multiplexing data between the retransmission packet data and the new transmission packet data so that the amount the retransmission packet data and the new transmission packet data in the buffer is less than or equal to the receivable data amount detected.

Since, the cited references do not disclose each and every claimed limitation, therefore, claims 8-12 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Q Phan whose telephone number is 571-272-7924. The examiner can normally be reached on 9AM-7:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Eisen can be reached on 571-272-7687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Huy Q Phan/  
Primary (TFSA) Examiner, Art Unit 2617  
Date : 03/13/2009